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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Justices of the Supreme Court of the United States:

Petitioners, defendants below, pray that writs of certiorari issue to review the judgments of the District Court of the United States for the District of Columbia, entered in the case of *United States of America v. United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America.* While the case was pending in the United States Court of Appeals for the District of Co-

lumbia on appeals by petitioners, respondent petitioned this Court for writs of certiorari which were granted on December 9, 1946.

Summary Statement of Matter Involved.

These are contempt proceedings growing out of alleged violations of temporary restraining orders issued by the District Court of the United States for the District of Columbia. On November 18, 1946, the District Court, without notice or hearing, issued a temporary restraining order to expire at 3:00 o'clock P. M., on November 27, 1946, and set the time for hearing plaintiff's motion for preliminary injunction at 10:00 A. M. on November 27, 1946 (R. 60).[1]

On November 21, 1946, the District Court issued a rule to show cause why petitioners should not be punished for contempt of court, and ordered a trial be held at 10:00 A. M. on November 27, 1946, in the event that it shall have been found by returns due on November 25th that petitioners had not sufficiently purged the alleged contempt (R. 72).

Pursuant to the rule to show cause, petitioners appeared in court on November 25th and, through counsel, denied the jurisdiction of the District Court to have issued the temporary restraining order (R. 503).

On November 26, 1946, petitioners filed a motion to discharge and vacate the rule to show cause (R. 82), asserting, *inter alia*, that the restraining order was void because it was, under the Constitution and statutes of the United States, beyond the jurisdiction of the Court; that civil contempt was not appropriate in the instant case; and that proper procedures for criminal contempt were not being followed.

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[1] All record references herein made are to the record submitted to this Honorable Court by the Government along with their petitions for writs of certiorari in Nos. 759 and 760.

On November 27, 1946, the District Court, over the objection of petitioners and during the course of argument on petitioners' motion to discharge and vacate the rule, extended the temporary restraining order (R. 160).

On November 29, 1946, the District Court overruled petitioners' motion to discharge and vacate the rule (R. 90).

On December 3, 1946, after trial on the issues raised by the rule to show cause, the District Court found petitioners, United Mine Workers of America and John L. Lewis, individually, guilty of both civil and criminal contempt (R. 90) and, on December 4, 1946, imposed fines of $3,500,000 and $10,000 respectively.

Jurisdiction

The judgments of the District Court were entered on December 4, 1946. On December 5, 1946, petitioners filed notices of appeal in the District Court. On the following day, December 6, 1946, respondent filed the record in the Circuit Court of Appeals for the District of Columbia.[2] On the same day, December 6, 1946, Chief Justice Groner of the Circuit Court, on respondent's motion and without prior notice to petitioners, ordered the Clerk to transmit the original record to this Court.

On the same day, December 6, Respondent petitioned this Court for writs of certiorari (Nos. 759 and 760), which were granted on December 9, 1946.

The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a).

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[2] Counsel for petitioners were telephonically advised by the Clerk of the Circuit Court that respondent filed the record on appeal pursuant to Rule 15 (d) of the said Circuit Court, which provides: "*Appellee may file record.* Should appellant fail to file the record promptly, the appellee in order to expedite the appeal may, upon making the prescribed deposit, file with the clerk of this court the complete record on appeal as soon as it is prepared."

Questions Presented

I. Did the District Court of the United States have jurisdiction, under the First and Thirteenth Amendments to the Constitution of the United States, to issue the temporary restraining order of November 18, 1946?

II. Did the District Court of the United States have jurisdiction or authority, under the Act of March 23, 1932, Ch. 9 (47 Stat. 70, 29 U. S. C. 101-115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946?

III. Did the District Court of the United States have jurisdiction to extend the *ex parte* temporary restraining order of November 18, 1946, without the consent of the defendants below?

IV. Is a temporary restraining order, issued without jurisdiction or authority, a nullity which can be disregarded with impunity? Assuming it cannot be so disregarded, was it not mandatory in these cases to have a trial by jury?

V. Was the rule to show cause in this case, supported as it was by an affidavit based on hearsay, belief and information, and failing to describe the proceeding as being in criminal contempt, and not being an independent proceeding, sufficient to sustain a judgment in criminal contempt?

VI. Were the status and interest of respondents in this case such as to permit a judgment in civil contempt?

VII. Did the Court below err in admitting prejudicial and irrelevant testimony during the trial on the rule to show cause?

VIII. Can petitioner, United Mine Workers of America, an unincorporated Association, be held responsible for the allegedly wrongful and criminal acts of any individual officer, member or agent in the absence of clear proof of actual

participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof?

IX. Are the fines imposed on petitioners excessive and are they repugnant to the Fifth and Eighth Amendments to the Constitution of the United States?

X. May civil and criminal contempts be tried simultaneously under a single rule to show cause?

Reason for Granting the Writs

This Honorable Court having granted Respondent's petition for writs in cases Nos. 759 and 760 under the unique and rarely utilized provisions of Section 240 (a) of the Judicial Code as amended, the true appellants, Petitioners herein, have no means other than this petition to present the questions and raise the issues they desire this Court to consider.

Conclusion

WHEREFORE, Petitioners respectfully pray that this petition be granted.

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